the application asked for costs of this application as between solicitors and clients to be taxed and paid out of the amount awarded; this was not opposed to by the defendants. I think, however, in the circumstances, a fair order is that each party, including the 10th defendant, should bear his own costs of these proceedings and I so order.

Order accordingly.

Solicitors: *Y.M. Ho & Chia; Tan, Lee & Choo.*

DOVER TRANSPORT AND TRADING CO. & ANOR. v. SINGAPORE BUS SERVICE (1978) LTD.

[A.C.J. (Chan Sek Keong J.C.) August 8, 1986]

[Singapore – Magistrate Court Appeal No. 5 of 1986]

Tort – Negligence – Road accident – Conflict of evidence – Quality and credibility of witnesses.

Road Traffic – Negligence – Collision of lorry with SBS bus.

In this case, the second defendant, the servant of the first defendant, drove his lorry in such a way as to hit the rear view mirror of the bus driven by the plaintiff's driver. The accident happened along the 10 m.s. Woodlands road whilst both vehicles were travelling in the same direction towards Upper Bukit Timah road. The Magistrate found the defendants negligent and gave judgment for the plaintiff. The defendants appealed.

Held, dismissing the appeal: the decision of the Magistrate was based substantially on his assessment of the quality and credibility of witnesses. In order to reverse, the court must not merely entertain doubts whether his decision is right but be convinced that it is wrong. In this case, the court is not convinced that the Magistrate is wrong.

Case referred to:

(1) *Whitehouse* v. *Jordan* [1981] 1 All E.R. 267, 276.

MAGISTRATE'S APPEAL.

Arul Anandan for the appellants.

John Ng for the respondents.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This appeal is against the decision of the Magistrate who found as a fact that the 2nd defendant, the servant of the 1st defendant, drove his motor lorry No. YC 1107 H which was carrying plywood in such a way as to hit the rear view mirror of the motor bus No. SBS 3355 H which was being driven by the plaintiff's driver. The accident happened along the 10 m.s. Woodlands Road whilst both vehicles were travelling in the same direction towards Upper Bukit Timah Road. Where the accident occurred, the road had two lanes for vehicular traffic and road works were being carried out on the road divider separating the dual carriageway at that stretch where the accident occurred. The bus was travelling on the left lane with about 3 feet clearance to the kerb and its rear view mirror was sticking out by about a foot across the white line separating the two lanes. The plaintiff's driver said that 2nd defendant suddenly overtook him but in doing so the plywood on the lorry hit against the rear view of the bus. He took evasive action by swerving the bus to the left and in so doing collided into the left kerb.

PW1, the bus driver, made two reports on the same day, one to the plaintiff and the other to the police. In both reports he stated that the lorry hit or grazed the rear view mirror.

PW2, the foreman who inspected the bus at 8 a.m. on the day after the accident, said in his evidence in chief that the rear view mirror was broken but that he overlooked repairing it. In cross-examination, he however admitted that he did not have the mirror replaced because it appeared to have been replaced when he came to examine the damage to the bus; it looked new to him. He explained that it was usual to replace mirrors because the bus needed to be shifted around. He also said that any mechanic or panel beater could have replaced it if he had found it inconvenient to drive the bus around without a mirror and that there was no need to requisition for a mirror from stores because most panel beaters kept one or two spares in the locker.

The Magistrate accepted the evidence of PW1 and PW2 in preference to the evidence of the defendant's driver.

In his grounds of decision, the Magistrate gave the following grounds for finding the defendant negligent:

(a) the defence rested on a bare denial which did not help in any way to substantiate a more probable case.

(b) it was highly improbable that the motor lorry could overtake the bus without grazing the right view mirror of the bus.

(c) PW1 was a more reliable witness than DW1.

(d) PW1's evidence was substantiated by that of PW2.

(e) there was no plausible reason why PW1 should suddenly swerve to the left and collide into the left kerb of the road.

Counsel for the defendant contended that ground (a) amounted to a reversal of the burden of proof. I agree, but only if the statement is read in isolation. In the context of the whole judgment, the Magistrate meant that the defendant had not rebutted the plaintiff's evidence. As for finding (b), there was evidence to show that the road was narrow, that the right rear view mirror of the bus extended into the right lane, that there were road works on the right lane, that the two vehicles were large vehicles, and that the lorry was carrying plywood which was protruding 6 inches from its left side. I cannot quarrel with this finding. As for ground (e), counsel for the defendant says that there may be any number of reasons for PW1 swerving into the kerb. That may be so. But the point of the Magistrate's finding was that it could not have been a coincidence that PW1 drove into the kerb at the time and place where DW1 overtook him. That was the implausibility. I see nothing wrong with the finding.

As for findings (c) and (d), the complaint was that PW1's evidence was not more reliable than that of DW1 and that PW2's evidence did not support PW1's evidence on the damage to the mirror. As to the first complaint, counsel for the defendant said that PW1 was an evasive witnesses because he did not answer in a forthright manner the questions of defendant's counsel on whether the lorry was travelling in its own lane and whether there were workers on both sides of the road. But the notes of evidence also show that DW1 also did not answer his questions in the same manner, particularly on how far he was from the bus when he first heard the 'bang'. All these matters were within the purview of the Magistrate. As he had the advantage of seeing and hearing the witnesses, I cannot disturb his finding on the relative credibility of the two witnesses.

As to the second complaint, the Magistrate accepted PW2's evidence "on this point" because it was a sensible and logical explanation. What was this point? What was this sensible and logical explanation? It was PW2's evidence that he believed that the right view mirror was damaged and replaced. Although the Magistrate did not expand on these findings, an examination of the evidence will show what he had in mind. The evidence was that PW2 saw a job card which referred to a damaged mirror; on inspection, he did not see a damaged mirror but a mirror which looked new to him (in comparison with the bus which was between 4 to 5 years old); he therefore concluded that the mirror he saw was a replacement; and when asked who could have replaced, he said that any mechanic or panel beater could have done it if he had found it inconvenient to drive the bus without a rear view mirror; on re-examination, he explained further that it was usual to replace broken mirrors on buses because during the night a bus might need to be shifted around. Counsel for the defendant did not directly put to PW2 that the mirror was not broken but skirted this issue by asking questions to elicit answers that the mirror was not broken. Having got the answers he did not want, counsel for the defendant now complains that DW2 was unreliable witness.

DW2 can be said to be unreliable in the sense that his explanation for the replacement of the mirror was not and cannot be relied upon as evidence. It was pure conjecture as the mirror could have been replaced for any number of reasons by any number of persons than for those reasons and by those persons referred to by DW2. But this area of unreliability says nothing about the reliability of DW2's evidence that he saw a replaced mirror. If this evidence was believed, then it follows that as a matter of probability the previous mirror must have been broken. It appears to me that he accepted the evidence of PW2 that he saw a replaced mirror and also his explanation for replacing the mirror. As I have pointed out, the explanation was not evidence. But his statement that he saw a replaced mirror was evidence. He was believed.

There is another obstacle in the way of the appellant in this appeal. The finding of the Magistrate that only DW1 was to be blamed for the accident was based primarily on his acceptance of the evidence of PW1. The evidence of PW2 was only secondary and served to reinforce his belief in PW1's evidence, It has not been demonstrated to me that the Magistrate's decision would have gone in favour of the appellant with PW2's evidence. In other words, even discounting the whole of PW2's evidence, the Magistrate found against the defendant on the oral evidence of PW1.

The decision of the Magistrate was based substantially on his assessment of the quality and

credibility of witnesses. In order to reverse, I must not merely entertain doubts whether his decision is right but be convinced that it is wrong: see Lord Edmund Davies in *Whitehouse* v. *Jordan*[1] at page 276. I am not convinced that the Magistrate was wrong for the reasons given above.

Accordingly, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Wong & Partners; Tan, Lee & Partners.*

GEBRUEDER BUEHLER AG v. PETER CHI MAN KWONG & ORS.

[O.C.J. (Thean J.) August 13, 1986]

[Singapore – Originating Summons No. 1021 of 1984]

Contract – Sale of equipment – Retention of title clause – Whether effective – Whether equipment had become fixtures – Quicquid plantatur solo, solo cedit.

Company Law – Charge – Whether equipment charged had become fixtures – Retention of title clause – Effect of.

The plaintiffs were a Swiss engineering company which manufactured machinery and equipment and provided services for erection and installation of machinery and equipment for the manufacture of cocoa and chocolate. The defendants were the receivers and managers of Allied Cocoa Industries Pte Limited ("the Company") appointed on February 27, 1984 by Bank of America National Trust & Savings Association ("the Bank") under the Deeds of Debenture dated April 9, 1980 and September 2, 1981. The Company was incorporated in Singapore and was engaged in the business of making cocoa butter and cocoa powder. It erected a factory on a piece of land which was leased from Jurong Town Corporation for a term of 30 years commencing from January 1, 1980.

On April 9, 1980, the Company executed a Deed of Debenture in favour of the Bank, whereby the Company, among other things, charged by way of fixed charge "all the freehold and leasehold property of the Company both present and future and the fixed plant and machinery (including trade fixtures) from time to time thereon" and by way of floating charge "the undertaking and all other property and assets of the Company both present and future" to secure the payment of all moneys and liabilities agreed to be paid under the Deed of Debenture. About 1½ years later, on September 2, 1981, a further Deed of Debenture of a similar nature as the first Deed of Debenture was executed.

Since the beginning of 1981, the Company had purchased from the plaintiffs under six separate contracts various machinery and equipment including spare parts for installation at the Company's factory. It also purchased machinery and equipment from other sources. The machinery and equipment purchased from the plaintiffs were assembled and installed together with machinery and equipment purchased from other sources, including some fabricated locally, to make up one entire processing and manufacturing plant for the making of cocoa butter and cocoa powder. From time to time spare parts for the machinery and equipment were also ordered from the plaintiffs and were delivered. All the machinery and equipment delivered by the plaintiffs to the Company were sold subject to a provision reserving to the plaintiffs their title thereto until full payment was made.

The Company subsequently fell into financial difficulties and on February 27, 1984, the defendants were appointed receivers and managers of the Company by the Bank under the two Deeds of Debenture. In exercise of the powers contained in the Deeds of Debenture the defendants took possession of the factory and all the property and assets of the Company, including the machinery and equipment and spare parts supplied by the plaintiffs (such machinery, equipment and spare parts being hereinafter collectively called "the Equipment").

The plaintiffs have not been paid the full purchase price of the Equipment and were creditors of the Company. Relying on the Retention of Title clause the plaintiffs claimed that they were the owners of the Equipment which the defendants had sold to a third party and were therefore entitled to be paid out of the proceeds of sale the balance of the purchase price of the Equipment. The defendants contended, however, that the plaintiffs did not have any title to the Equipment at the time when they took possession of the Company's factory and in consequence at the time when all the property and assets of the Company including the Equipment were sold.

Held, dismissing the plaintiffs' claim: (1) in the present case, the Equipment though installed and incorporated into the processing plant have not lost their identity and are identifiable, machinery by machinery and equipment by equipment, as supplied by the plaintiffs;

(2) the question whether the Equipment had become fixtures and therefore part of the land depends on the intention of the Company at the time they were installed in the factory. If it was intended that the Equipment should form a permanent part of the factory then in law they became fixtures upon annexation thereof to the factory and such intention is to be gathered mainly from: (i) the degree of annexation and (ii) the object or purpose of annexation;

(3) all or substantially all parts of the plant were fixed either directly to the factory or indirectly thereto, *i.e.* - affixed to other equipment or structures which were themselves affixed directly to the factory;

(4) the cocoa processing plant in the present case was installed in the factory as "an adjunct" to the factory and to improve its usefulness as a factory for manufacturing cocoa butter and cocoa powder;

(5) therefore there was physical annexation of the Equipment to the land and the annexation was for the better enjoyment of the factory. In law they had become fixtures and formed part of the land to which they were affixed;

(6) the Equipment had become part of the land long ago, at least since October 1982. Therefore the plaintiffs